RESTRAINT
SUPREME COURT, U. S.
OCT 4 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1958

MOHASCO INDUSTRIES, INC., ET AL.,
Petitioners,

v.

ACME FAST FREIGHT, INC., ET AL.,
Respondents.

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BEYCE REA, JR.
918 - 16th Street, N.W.
Washington, D. C. 20006

Counsel for Respondents Acme Fast Freight, Inc., et al.

Of Counsel:

REA, CROSS & KNEBEL
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

October 4, 1974

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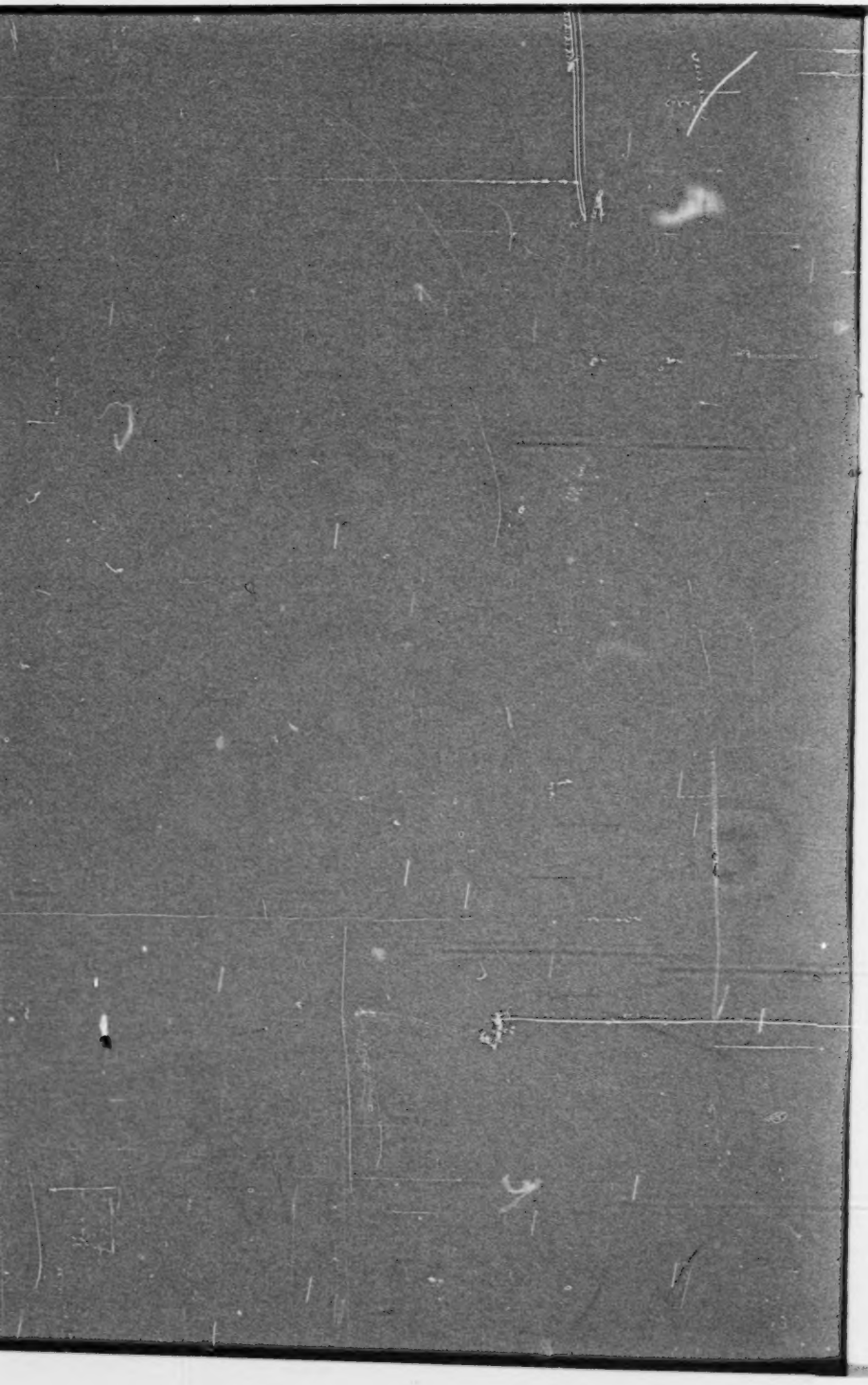

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Come now Respondents and, pursuant to Rule 24 of this Court, file this Supplemental Brief to bring to the attention of the Court the decision of the United States Court of Appeals for the District of Columbia Circuit in *United States* v. *Associated Transport, et al.* That decision, rendered October 1, 1974, is Appendix A hereto.

As is readily seen, the *Associated* Case is on all fours with the case at bar. In both cases shippers brought suit against motor common carriers on the basis of the same order of the Commission, *i.e.*, an order issued in a proceeding under Section 216(g) of the Interstate Commerce Act, 49 U.S.C. 316(g), directing the cancellation of increases in classifications of furniture on the ground that they were "not shown to be just and reasonable."

The Court of Appeals for the District of Columbia Circuit holds there, as the Court of Appeals for the Fifth Circuit held here, that a suit for restitution of monies the carriers collected under the increases during the period they were in effect does not lie.

Petitioners' principal claim in support of the issuance of a writ of certiorari is that the decision of the Fifth Circuit here is in conflict with the decision rationale of the Eighth Circuit in *Middlewest Motor Freight Bureau* v. *United States*, 433 F. 2d 212 (1970) cert. den., 402 U.S. 999 (1971). The Court of Appeals for the District of Columbia Circuit agrees with the Court of Appeals for the Fifth Circuit that there is no such conflict.

Respectfully,

BRYCE REA, JR.
918 - 16th Street, N.W.
Washington, D. C. 20006

Counsel for Respondents
Acme Fast Freight, Inc., et al.

Of Counsel:

REA, CROSS & KNEBEL
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006
October 4, 1974

CERTIFICATE OF SERVICE

I, Bryce Rea, Jr., counsel for Respondents herein, hereby certify that, on the 4th day of October, 1974, I served the foregoing Supplemental Brief on the parties hereto by mailing copies, postage prepaid, to the following:

Richard J. Hardy, Esq., 425 Thirteenth Street, N. W., Washington, D. C. 20004; Richard W. Dortch, Esq., First National Bank Building, Jackson, Mississippi, 39205; Michael P. Regan, Esq., Mohasco Industries, Inc., 57 Lyon Street, Amsterdam, New York 12010; Richard H. Lange, Esq., Mohasco Industries, Inc., 57 Lyon Street, Amsterdam, New York 12010; Samuel Wiener, Esq., 233 Broadway, New York, New York 10007.

BRYCE REA, JR.